

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF AT&T SOUTH, INC.)	
TO DETARIFF SPECIALIZED TERMINAL)	CASE NO. 8970
EQUIPMENT FOR DISABLED CUSTOMERS)	

O R D E R

Procedural Background

On June 13, 1984, AT&T South, Inc., filed a petition with the Commission to detariff specialized terminal equipment for disabled customers. On August 9, 1984, AT&T South was notified that it must file for a certificate of public convenience and necessity in order to continue providing currently tariffed services. Additionally, AT&T South was asked to brief various issues associated with the detariffing proposal. The Commission's stated intention was to take no action on the AT&T South petition until the certificate and memorandum addressing these issues had been filed.

On December 12, 1984, AT&T South filed a memorandum and requested an informal conference with the Commission staff. On January 17, 1985, William B. Rogers, Executive Director, Commission on the Deaf and Hearing Impaired, was granted full intervention. Mr. Rogers, representatives of AT&T South and Commission staff attended the informal conference on January 18, 1985. Following the conference, AT&T South filed a further memorandum in which it took issue with the assumption that AT&T

South is a utility. This memorandum also addressed the issue of whether the Commission can forbear from regulation where it has jurisdiction.

Discussion

The first issue to be addressed is whether AT&T South is a utility within the meaning of KRS 278.010(3)(e). AT&T South takes the position that because it performs no common carrier functions and only offers specialized terminal equipment, it is no different than an entity such as Radio Shack. However, this perspective ignores the fact that this embedded equipment has always been offered on a regulated basis and only was transferred to AT&T South as a result of the AT&T divestiture. There is no question that had divestiture not occurred, the same equipment would have remained under regulation. Mere transfer of ownership does not change the status of utility property. The Commission therefore concludes that the definition of a telephone utility, contained in KRS 278.010(3)(e), encompasses AT&T South, which owns "facilities used or to be used in connection with the transmission or conveyance over wire, in air or otherwise, of any message by telephone...".

Since the Commission does have jurisdiction, it must now address whether it can forbear from regulation.¹ AT&T South takes the position that the Commission has this authority. AT&T South cites the Commission's decision to apply a less stringent form of

¹ The Commission's authority to decide whether to detariff specialized terminal equipment is recognized in CC Docket No. 83-427, Access to Telecommunications Equipment by the Hearing Impaired and other Disabled Persons, Memorandum Opinion and Order dated November 8, 1983.

regulation to non-dominant interexchange carriers in Administrative Case No. 273 as indicative of this power. Although the circumstances present in that proceeding and those pertinent here appear distinctly different, the Commission is of the opinion that it does have the power in this matter to forbear from regulation, if the circumstances are appropriate. The Federal Communications Commission ("FCC") has forborne regulation in its Competitive Carrier Rulemaking, 91 FCC2d 59 (1982) and 93 FCC2d 54 (1983). Congress and the FCC have deferred the detariffing versus continued regulation of specialized terminal equipment to the state commissions. Therefore, the Commission has been specifically charged with this decision and may forbear or not, based upon the public interest.

Before forbearing or detariffing, however, the Commission must consider the consequences of such action on its prior decisions. In Administrative Case No. 220, the Commission required that certain specialized terminal equipment known as TTYs be made available at cost and mandated that they be available on a monthly lease basis since those items cost several hundred dollars. Before either detariffing or forbearing, which is tantamount to a modification of that decision, the Commission must give notice and allow interested parties to that case and this one an opportunity to comment. Therefore, the Commission will defer action on the AT&T South petition to detariff until these due process requirements are satisfied. The Commission is simultaneously issuing an Order in Administrative Case No. 269 - Phase III in which these issues will be raised.

Findings and Orders

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. AT&T South is a utility within the meaning of KRS 278.010(3)(e).

2. AT&T South's detariffing proposal, if accepted, would have the effect of modifying the Commission's decision in Administrative Case No. 220.

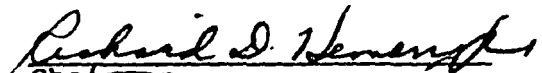
3. Before any modification to the decision rendered in Administrative Case No. 220 is made, due process requires that notice and opportunity for comment be provided all parties of record.

IT IS THEREFORE ORDERED that:

1. AT&T South's petition to detariff be held in abeyance pending the outcome of the Commission's generic inquiry regarding detariffing embedded specialized terminal equipment.

Done at Frankfort, Kentucky, this 23rd day of April, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary